

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SUZANNE SHELL,)	
)	Case No. 1:15CV1757
)	
Plaintiff,)	
)	
vs.)	
)	Magistrate Judge Kenneth McHargh
OHIO FAMILY RIGHTS,)	
et al.,)	
)	
Defendants.)	MEMORANDUM
)	AND ORDER
)	

McHARGH, Mag.J.

The pro se plaintiff Suzanne Shell filed suit in this court against pro se defendant Ray R. Lautenschlager, as well as against several parties who have since been dismissed. Shell filed an amended complaint on January 19, 2016, alleging copyright infringement against the defendants concerning three works with copyrights allegedly registered and owned by Shell. (Doc. 15.)

Currently before the court is Shell's Motion for Reconsideration of the court's August 29, 2016, ruling. (Doc. 81; *see also* doc. 78.)

At the Case Management Conference held on July 1, 2016, the court scheduled a status conference for Sept. 6, 2016. (Doc. 65.) Prior to the status

conference, the parties filed a number of motions, most of which the court addressed in its order of August 29, 2016. (Doc. 78.)

Shell had also filed two motions for sanctions (doc. 68, 69), based largely on allegations that the then-defendants¹ had violated Civil Rule 11(b) by making improper or frivolous filings. Shell had earlier filed a motion for protective order, alleging that the defendants had been making “scandalous, malicious, vexatious, irrelevant, and meritless arguments and diatribes” against her. (Doc. 56, ¶ 6.) At the September 6 status conference, the court found that plaintiff’s motions for sanctions were well-taken, but in light of the defendants’ pro se status, no sanctions were imposed at that point. (Doc. 82, at 2.)

The court notes that one of the factors that the court must consider when deciding whether to impose sanctions is whether the party had been warned that failure to cooperate in discovery could lead to the sanction imposed. *Freeland v. Amigo*, 103 F.3d 1271, 1277 (6th Cir. 1997); *Trustees of Laborers, Local 310 Pension Fund v. Able Contracting Group, Inc.*, No. 1:04CV2294, 2007 WL 184748, at *5 (N.D. Ohio Jan. 19, 2007). No such warning had been given by the court, in part because the parties had not brought their discovery dispute to the court’s attention at an earlier date. At the status conference, the parties were warned that further such conduct would result in sanctions, which could include monetary sanctions, the award of default judgment, or other sanctions provided by the rules, or within the

¹ Rosalind (“Roz”) A. McAllister, who was a defendant at that point, has since been dismissed from the action. (Doc. 83.) A dismissal entry has not yet been received.

inherent power of the court. (Doc. 82, at 2-3; *see* Fed. R. Civ. P. 11(c), and 37(b); Local Rule 7.1(i).)

Shell has filed a Motion for Reconsideration of the court's August 29 ruling. (Doc. 81.) Lautenschlager has filed a response. (Doc. 86.)

In her earlier motion(s), Shell had argued that, because the defendants had failed to object to the interrogatories in a timely manner, any objections should be deemed waived. (Doc. 78, at 5; doc. 70, at 3.) The parties had also disputed the date that the interrogatories had been received by defendants. In addition, the court noted:

In any event, . . . neither party contacted the court to attempt to resolve this discovery dispute with the court prior to the filing of the motion to compel [in accordance with Local Rule 37.1]. Given the pro se status of all parties, and the lack of compliance with the Local Rules in this regard, the court will not deem objections to be waived.

(Doc. 78, at 6.)

The court pointed out that Shell had exceeded the permissible number of interrogatories, and that many of Lautenschlager's objections were insufficiently specific. (Doc. 78, at 6-7.) The court noted, as well, that the relevance of several of the interrogatories was questionable. *Id.* at 7-8. Considering the pro se status of both plaintiff and the defendants, the court ruled:

The motion to compel [doc. 70] is granted in part, and denied in part. The court will re-set the clock. Shell will be permitted to re-serve relevant interrogatories on the defendants. Shell will propound no more than twenty-five interrogatories (to each), which are reasonably calculated to lead to the discovery of admissible evidence in this copyright infringement suit, and properly serve them on the defendants. The defendants must answer these interrogatories, or serve objections, within thirty days of the service of the interrogatories.

Fed. R. Civ. P. 33(b)(2). “The grounds for objecting to an interrogatory must be stated with specificity.” Fed. R. Civ. P. 33(b)(4).

(Doc. 78, at 8.)

Shell has filed an objection and a motion to reconsider this order. (Doc. 81.)

As noted, Lautenschlager has filed a response. (Doc. 86.)

The Federal Rules of Civil Procedure do not explicitly provide for a “motion for reconsideration.” In the Sixth Circuit, such a motion, if served within ten days of the entry of judgment, is considered a motion to alter or amend judgment, pursuant to Fed.R.Civ.P. 59(e). *Stubblefield v. Skelton*, 117 F.3d 1421, 1997 WL 397240, at *2 (6th Cir. 1997) (TABLE, text in WESTLAW) (citing *Huff v. Metropolitan Life Ins. Co.*, 675 F.2d 119, 122 (6th Cir. 1982)); see also *Chesner v. Stewart Title Guar. Co.*, No. 1:06CV00476, 2009 WL 585821, at *1 (N.D. Ohio Feb. 24, 2009) (citing *McDowell v. Dynamics Corp. of Am.*, 931 F.2d 380, 382 (6th Cir. 1991)) (motion for reconsideration treated as Rule 59(e) motion)

A motion for reconsideration generally requires a showing of “(1) a clear error of law; (2) newly discovered evidence that was not previously available to the parties; or (3) an intervening change in controlling law.” *Owner-Operator Independent Drivers Ass’n, Inc. v. Arctic Exp., Inc.*, 288 F.Supp.2d 895, 900 (S.D. Ohio 2003) (citing *GenCorp., Inc. v. American Int’l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999)); see also *Henderson v. Walled Lake Consol. Sch.*, 469 F.3d 479, 496 (6th Cir. 2006). “Motions for reconsideration do not allow the losing party to ‘repeat arguments previously considered and rejected, or to raise new legal theories that should have been raised earlier.’” *Id.* Motions for reconsideration are disfavored.

Davie v. Mitchell, 291 F.Supp.2d 573, 634 (N.D. Ohio 2003), *aff'd*, 547 F.3d 297 (6th Cir. 2008), cert. denied, 558 U.S. 996 (2009); accord, Dottore v. Fortran Printing, Inc., No. 1:04CV2153, 2006 WL 3228782, at *2 (N.D. Ohio Nov. 6, 2006) (citing Davie); Mechler v. City of Milford, No. C-1-02-948, 2006 WL 971397, at *3 (S.D. Ohio Apr. 10, 2006).

In her motion for reconsideration, Shell argues that the court erred in ruling that defendants had not waived their objections to the interrogatories. (Doc. 81, at 1.) Shell contends that the defendants are not entitled to any benefit of the doubt based on their pro se status, and that they have conducted themselves with bad faith throughout the litigation. *Id.* at 5.

Shell fails to recognize that the court also considered her own pro se status in even addressing her motion to compel at all. As the court has previously explained, her motion to compel was filed despite her failure to comply with Local Rule 37.1. This court has found that failure to comply with LR 37.1 is grounds for denying a subsequent non-compliant motion to compel. *See, e.g., St. John v. Bosley, Inc.*, No. 1:10CV0954, 2011 WL 1542532, at *2 (N.D. Ohio Apr. 21, 2011) (citing cases); *Infocision Mgmt. Corp. v. Foundation for Moral Law, Inc.*, No. 5:08CV1342, 2009 WL 1661650, at *2 (N.D. Ohio June 15, 2009) (citing cases). Rather than simply denying her motion to compel on the basis of her failure to comply with LR 37.1, the court addressed her motion, in part in consideration of her pro se status, in the interests of moving the case forward.

Shell's motion for reconsideration rests, for the most part, on arguments the court has previously considered and rejected. The court's ruling was intended, in part, to give the parties a fresh start, and to move the case forward. The parties have been cautioned as to the sanctions that may result should there be any further failure to comply with discovery.

The motion for reconsideration (doc. 81) is DENIED.

IT IS SO ORDERED.

Sept. 28, 2016

/s/ Kenneth S. McHargh
Kenneth S. McHargh
United States Magistrate Judge